LIQUIDATED DAMAGES OR PENALTY? p. 612
THE LANDLORD AND TENANT ACT, 1927 p. 614

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The Solicitors' Journal

VOL. LXXVI. **Saturday, September 3, 1932.** No. 36

Current Topics : The Evolution and Functions of the Official Solicitor — The Home Office Letter — The Marriage of Minors without Consent — Farm Cottages — Economy and Workmen's Compensation — The Truck Acts 609
Criminal Law and Practice 611
Liquidated Damages or Penalty? .. 612
The Landlord and Tenant Act, 1927 614
Road and Rail Rivalry 615
Company Law and Practice 616
A Conveyancer's Diary 617
Landlord and Tenant Notebook .. 618
Our County Court Letter 619
Books Received 619
Points in Practice 620
Obituary 622
In Lighter Vein 622
Long Vacation, 1932 623
Legal Notes and News 623
Stock Exchange Prices of certain Trustee Securities 624

Current Topics.

The Evolution and Functions of the Official Solicitor.

THE OFFICE of Official Solicitor, rendered vacant by the recent death of Mr. C. R. BRADBURNE, has had its name changed more than once in the course of the last hundred years. Apparently, the first appointment was made about the year 1828, when it was thought expedient to appoint a person, to be designated the Solicitor to the Suitors' Fund, to keep a watchful eye on the funds standing in the books of the Court of Chancery. At a later date his title was changed to that of Solicitor to the High Court of Chancery, but since the Judicature Acts he has been known under his present title of Official Solicitor to the Supreme Court. Of his old connexion with the suitors' fund a relic survives in the requirement that a copy of every petition or summons for dealing with funds which have been placed in the dormant list, where the fund amounts to or exceeds £500, shall be served upon him unless the court otherwise orders. Various other duties of a curiously heterogeneous character have been devolved upon him from time to time. Thus, under the Court of Chancery Act, 1860, he was required—and apparently the obligation still subsists—to visit four times a year all persons confined in prison for contempt of court and to report his opinion on their respective cases to the Lord Chancellor. Further, he is sometimes called upon to act as guardian *ad litem* to infants and persons of unsound mind not so found by inquisition ; to make investigations and reports in lunacy ; and, generally, to assist the court in any matter where his services are invoked, as they were by the Court of Appeal in one of the recent *Russian Bank Cases* to take evidence as to the legal position of those institutions under Soviet law. Again, under Ord. XXXIII, r. 9, he may be instructed to enquire into cases of undue delay in proceedings. The office of Official Solicitor, which is in the gift of the Lord Chancellor, is rather summarily dismissed by the late COMTE DE FRANQUEVILLE in his learned work on " Le Système Judiciaire de la Grande Bretagne " as a " quasi-sinécure," but having regard to the variety and multiplicity of the duties cast upon him it scarcely merits this somewhat derogatory designation.

The Home Office Letter.

FROM MANY points of view the letter (dated 20th July) sent by the Home Office to magistrates throughout the country is a welcome document. It draws the attention of justices to the " alarming increase during recent years in the number of road accidents involving death or personal injury " as set out in the return for 1931, which was presented to Parliament on 27th May, 1932. Though there has been a small decrease in the number of fatal accidents, as compared with 1930, no fewer than 6,691 persons were killed in Great Britain, or rather more than eighteen a day, and the number of accidents involving non-fatal injuries increased by over 24,000. The opinion has been expressed in authoritative quarters that the provisions of the existing law are sufficient, if effectively enforced. Emphasis is laid, the letter states, on the suspension of driving licences in certain cases " as a specially appropriate and effective method of dealing with offenders and of bringing home to drivers generally the need for improvement in the standard of care and consideration for other road users." The appalling rise in the number of accidents justifies beyond any doubt the severity of the tone of the Home Office letter. Over 3,000 pedestrians met their death and over 72,000 were injured in 1931 as a result of motor accidents, while the corresponding number of pedal cyclists who were killed and injured respectively was 869 and 36,442. On principle it is perhaps not quite orthodox for a Government department to recommend to a judicial tribunal the basis on which sentences for criminal offences should be awarded, but every possible benefit must arise from the assistance that different departments of state can render independent tribunals by means of the sources of information which they have at their command. Magistrates throughout the country will take note of the now obvious fact that a state of emergency exists, and will act accordingly. Whether or not the law ought to be strengthened both for the protection of the public and for the punishment of the errant motorist is a matter which will, no doubt, receive further attention in the near future.

The Marriage of Minors without Consent.

IN OUR recent article " Uniform Recognition of Marriage and Divorce " (76 SOL. J. 599), we discussed the personal disability created by the requirement of the parents' or guardian's consent to the marriage of a minor, a disability which probably exists in nearly every civilised country. Since the date of it, a young Finnish couple appear to have completed a " romance " by marrying in England, which they were prevented from doing in their native country, and a young Englishman and his fiancée, unable to marry in England by reason of the youth's infancy and his father's veto, are reported after an unsuccessful examination of the situation in Europe to be proceeding to the United States for the purpose. Whether they can accomplish it remains to be seen, but, if so, presumably their marriage will be held valid in England, according to the decisions as to Gretna marriages, such as *Compton* v. *Bearcroft* (1769), 2 Hagg., Con. 444n. The recognition of such marriages abroad by English law, and the non-recognition of marriages when the disabilities are occasioned by the Table of Affinity, as in *Brook* v. *Brook* (1861), 9 H.L.C. 193, is discussed in a note in " Dicey's Conflict of Laws," 5th Ed., p. 736. The official explanation is that the consent of the parent is part of the form of marriage ceremony, and so not really a disability. The learned editor of " Dicey " observed that this is logically a very doubtful theory, and

few will disagree with him. The disability of want of consent, as was seen clearly in the *Ogden Case* [1908] P. 46, is treated in neighbouring countries just as seriously as any other, and should be recognised as such in any convention dealing with the marriages of persons under disability. In the *Ogden Case* the husband, a young Frenchman, could only procure his marriage in England by committing an offence against our law, namely, making an untrue statement as to his age on marriage. In effect, this offence was as serious as bigamy, for it caused the unfortunate woman to yield herself to him in the belief that she was validly married, which was not the case by the French law, the only one which really mattered, since the young man intended all the time to return to France. In such circumstances, it may be suggested that a false statement of this kind should by international convention be made an extraditable offence, otherwise young foreigners will be able to deceive English women with impunity.

Farm Cottages.

THE SHARP contrast between the two views expressed in the report of the Inter-Departmental Committee on Agricultural Tied Cottages (Stationery Office Cmd. 4148) was only to be expected from the highly controversial nature of the reference. Mr. H. A. GEORGE, the only civil servant member of the committee, felt it improper to associate himself with either view or to make independent recommendations. Sections "A" and "B" of the report expressed the opposing views, and each was signed by three members of the committee. The scope of reference was "to enquire into the conditions of occupation of agricultural cottages in England and Wales which are either let to or provided for agricultural workers in consequence of their employment; to report upon the present working of the special provisions of the Rent Restriction Acts relating to such cottages and to make recommendations as to any alterations which may be desirable in the existing law. Section "A" recommended that from a fixed date every agricultural worker occupying a cottage belonging to his employer should be deemed to be a tenant; and where there is no existing tenancy the figure fixed by the Agricultural Wages Committee for their respective areas as that at which a cottage may be reckoned in part payment of the current minimum rates of wages should be taken as being the weekly rent of the tenancy. The tenant should be entitled to a rent book and one month's notice to quit. The employer should be obliged to prove the existence of suitable alternative accommodation in order to obtain possession of a cottage. The tied cottage system except in the case of men in charge of breeding stock, should be abolished. The other view, expressed in Section "B" of the report, is that both from the point of view of the farmer, who would in the absence of control be subject to recurring periods of embarrassment and loss, and the incoming farm worker, who must be assured of housing accommodation on entering his employment, the proposals in Section "A" would be ill-advised. It is suggested that Parliament should put pressure on local authorities to expedite the building of houses in rural areas, the solution of the problem lying in the due enforcement of the Housing Acts. Special considerations apply to farm cottages, and such considerations obviously require recognition in any suggested changes in the law. Without expressing an opinion, however, in favour either of Section "A" or Section "B" of the report, we heartily endorse the suggestion that the Housing Acts be more vigorously enforced in rural areas in order to secure what OLIVER GOLDSMITH called "a bold peasantry, their country's pride."

Economy and Workmen's Compensation.

A SUGGESTION for the alteration of the law in order to effect further economies during the present industrial depression comes from Sir JOHN COLLIE, C.M.G., M.D., in an article in *The Times* of 24th August. He states that the number of cases of accident in which compensation under the present Workmen's Compensation Act was paid in 1930 amounted to 461,130, although the calculation of the Home Office in affording information as to the probable effect of passing the Act of 1897 was that 150,000 accidents a year would fall within its scope. The writer points out that the present law covers almost every conceivable case legitimately entitled to compensation, and not a few of doubtful legitimacy, and recommends therefore that "opportunity might be found for ensuring that industry bears only the burden which should legitimately fall on it." The Home Office computation of the total charge on all industries and employments affected by the Act is stated to be "something over £12,000,000," only about one-third of which is covered by insurance. "It is a very sound principle," says the writer, "that judges should confine their attention to the facts of the particular case before them, and apply what they find to be the intentions of Parliament, as expressed by their Acts, irrespective of what the consequences may be on subsequent cases; but could it have been within the contemplation of those who framed the Act thirty-five years ago that a workman who had sustained an injury, but for some wrongdoing was confined in one of His Majesty's prisons, should still be entitled to draw his weekly half-pay allowance under the Workmen's Compensation Act? Yet such a case is on record." The case referred to is doubtless *McNally* v. *Furness, Withy & Co. Ltd.*, 6 B.W. C.C. 664, in which a unanimous Court of Appeal held that supervening imprisonment did not, any more than supervening heart disease (*Harwood* v. *Wyken Colliery* [1913] 2 K.B. 158) or supervening imbecility or lunacy terminate the right to compensation. As the court pointed out in that case, to hold otherwise would be to legislate instead of to interpret the Act, as the word "solely" would have to be read into s. 9 after the words "where total or partial incapacity for work results from the injury." This is undoubtedly an anomalous case which calls for legislation on similar lines to the employer's exemption from liability for injuries due to the "serious and wilful misconduct" of the workman in s. 1 (1) (*a*). Any suggested legislation, however, which might restrict the workman's right to compensation should be carefully considered, as many of the difficulties of interpretation arise from the nature of the statute, and a right once given should not be lightly qualified or removed.

The Truck Acts.

A PARTICULARLY unfortunate attempt to evade the provisions of the Truck Acts is disclosed by the following letter addressed by an official of a co-operative society to the father of one of its employees, and cited in a recent prosecution: "Dear Sir,—The committee regret to find that your purchases with the society for the last quarter are on the low side, and as you have a son employed under the society I have to say that the board are not satisfied. They consider you are under a strong moral obligation loyally to trade with the society, and if some of your trade is passing us will you please give the matter your personal attention and divert what is passing into the society. The question is of grave importance, and unless a substantial improvement is made the board intend to go further into the position." Prosecuting counsel explained that employees were compelled to spend a minimum sum, which could only be derived from their wages, with the society. If they failed to spend not less than £1 a week they were brought before the board of management and told that they had been selected for dismissal. The society was fined £10 and ordered to pay 10 guineas costs. The Truck Acts (1831, 1887, 1896) were designed to prevent a peculiarly despicable form of tyranny and their necessity is well illustrated by cases of the foregoing character. The use of the word loyalty in this connexion and the suggestion of a moral obligation can only be described as nauseous.

Criminal Law and Practice.

NON-EXPERT OPINION EVIDENCE.

THE opinion of a witness is, according to the strict letter of the law, not admissible in evidence unless it is the opinion of some skilled person qualified by a course of special study or experience to form an opinion upon the point in question.

Like some others of the strict rules of evidence, this one is much neglected in practice, and all sorts of witnesses are asked for an opinion upon points as to which their opinion is worthless. In one very important department the law sanctions the giving of worthless opinions, for a witness is deemed competent to give an opinion whether a document was or was not written by a certain person merely if he has once seen that person write. The other qualification for giving an opinion as to handwriting is not so slight. It consists in the witness's having received documents purporting to be written by the person in question in answer to documents written by the witness or under his authority, or having documents purporting to be written by the person in question habitually submitted to him.

To finish with the identification of handwriting while we are upon that subject, it may be remarked that modern methods of examining and comparing handwritings are truly scientific, depending on exact measurements from which ratios are calculated. These have a value far beyond the observation of general resemblances. The standardisation of education has led to a considerable uniformity of handwriting, so that many people produce specimens of calligraphy superficially alike. But the idiosyncrasies of the individual appear more in the relation of one letter to another, in the relative size of the letters and in the spacing of letters and words.

Expert evidence is nowadays largely of facts which the special training of the expert has enabled him to observe, which he can point out to others, and which, their attention being awakened by demonstration, they can appreciate almost as well as himself. Thus the precipitin blood test can be shown and explained to a jury. Finger prints suitably enlarged and with the points of likeness clearly indicated are among the most convincing exhibits which can be shown. The opinion of a police officer from the finger print department, standing alone, is not of high testimonial value; when he puts in evidence his facts he is usually conclusive upon the point he wishes to establish.

It is not a little curious that, side by side with the development of expert evidence from mere opinion to practical demonstration, we have accustomed ourselves to the loose use of inexpert opinion on points of importance. One of these is the speed of vehicles. It is very common indeed for a lay witness with no knowledge or very little knowledge of motor cars to be asked to give an opinion as to the speed of one or more mechanically propelled vehicles. His answer when given is worth nothing. It is used to darken judgment.

The estimates of even experienced people as to the speed of cars moving with high velocity are not worth a great deal. The observation is usually made over a very brief period, is unchecked by any close estimate of time occupied and distance travelled. The estimate is quite commonly of a moving body which is not moving with uniform velocity. Anything like accuracy cannot reasonably be expected, yet one frequently hears arguments based upon such opinions, and, what is worse still, discovers the judgments of courts to be resting upon these insecure foundations.

A simple test should convince the ordinary man of his incapacity to judge speeds. If he sit in a car with the speedometer covered and be asked to state the miles per hour at which the car is moving, and then compare his estimate with the immediately revealed dial, he will find himself often widely wrong. His estimate of speed will be affected by the width of the road. The hedge, in a narrow lane, will run by at a speed apparently much greater than the fence of an arterial road, though the car be actually moving at the same speed in both places. The shelter of a closed car will tend to produce absurdly low estimates and the rush of air in an open car to lead to equally foolish over-statements. Only long experience under many conditions, with a multitude of conscious observations, can produce any real capacity to judge speeds from inside a car.

From outside the moving body results are vitiated by another set of defects in observation. A not large variation in speed in a car passing and re-passing an observer broadside will lead to estimates very wide apart. If the observer see the car head-on, or nearly so, or disappearing from his view straight ahead, it will be possible to frame an estimate only within very wide limits of error. Yet we constantly hear witnesses pressed in court to give close estimates. When the inevitable guess is made, either the witness is made to look so foolish that other parts of his evidence which are reliable get heavily discounted, or his guess is treated, by advocates who know better, as material to be used without scruple to defeat an opponent.

One of the curses of evidence in courts of justice is the unwillingness of a witness to say, "I don't know." He is constantly badgered into direct assertion or negation, but is never encouraged to expose his ignorance. "Yes" and "No" are often quite deceptive answers, for truth, as men observe it, is only an approximation. The witness ought frequently to be offered the third alternative of admitting a blank or doubtful mind on the point as to which he is being interrogated.

Handwriting and speed are perhaps the subjects upon which the greatest amount of non-expert opinion evidence is offered and allowed. There are others. Guesses are made, and, alas, treated as having considerable value, as to the emotions of third parties. "He was annoyed, your worship," is a phrase constantly on the lips of policemen wishing to prove charges of soliciting prostitution. The Bench sometimes plays up with the question, "Was anyone annoyed?" Of course annoyance can be inferred, not unfairly, from behaviour, but to infer it from facial expression, often seen at a considerable distance, is merely to make a wild conjecture.

On the other hand, one has to admit the necessity of accepting opinion evidence upon a condition such as drunkenness. A list of symptoms is on the whole less convincing than an opinion based on personal contact and observation—a general impression. Most of the evidence as to drunkenness comes from policemen, who are perhaps to be regarded, at least after some years in the force, as experts in diagnosing intoxication. But it is a state as to which it is easy to be mistaken, and there is too great readiness to accept the *ipse dixit* of a constable and too much reluctance to attach weight to the denial of the accused.

There are, here and there, persons whose opinion upon anything is of weight, because they form their opinions carefully. If they can be got to give the grounds of their opinion it will usually be found that they can testify as to facts upon which the opinion has been based, and this really takes them out of the category of opinion witnesses. Their materials being facts are capable of direct check.

Thus a witness in court being interrogated as to distance is often asked to estimate the length of the court room. A careful man will gauge the width of a window (a line so short is susceptible of close estimate) and the space between two windows, will add the two together and multiply by the number of windows. Or he will similarly gauge the space between two ornaments, or the framing of a panel, and so arrive at a close approximation to the length required. If he admit his method and disclose that he used a similar one in fixing the distance he is giving in evidence, he shows himself a reliable and careful witness.

We have dealt quite briefly with an important subject, but hope we have said enough to invite attention to the dangers

which lie in the acceptance of conjecture. It is difficult enough to evaluate the testimony of persons giving direct evidence of facts which have come under their observation. When the realm of guesswork is entered evaluation becomes impossible.

Our very strict rules of evidence, some of which are intended to obviate this very danger, tend, by their inelasticity, to defeat themselves. Counsel are ingenious in turning difficulties, and witnesses, ignorant of the rules, meet their questioners more than half-way. There is much to be said for the continental method of wide admittance of evidence and careful examination and estimate of its value. Recent relaxations of some of the less convenient of our rules are perhaps the first steps towards the modification of the English system in that direction.

Liquidated Damages or Penalty?

WHERE the parties to a contract have named a certain sum which is to be paid in the event of non-performance, a question arises which is often of some difficulty: Is the sum named liquidated damages, or is it a penalty? The decision of the Court of Appeal (overruling WRIGHT, J.) in *Widnes Foundry* (1925) *Ltd.* v. *Cellulose Acetate Silk Co. Ltd.*, 47 T.L.R. 481, raises an interesting point in relation to this question. But, before proceeding to consider it, it would be an advantage to review the principles involved.

The importance of ascertaining whether a named sum is liquidated damages or a penalty needs little emphasis. Where it is a penalty, only the actual damage sustained is recoverable; the amount recoverable as liquidated damages is the amount named as such. "In early times it was decided by courts of equity that, where a sum of money was agreed to be paid as a penalty for non-performance of a collateral contract, equity would not allow the whole sum to be recovered; but, where damages for non-performance of such contract could be estimated, would cut down the penalty to the amount of the actual damage sustained," per KAY, L.J., in *Law* v. *Local Board of Redditch* [1892] 1 Q.B., at p. 133.

Whether a named sum is liquidated damages or a penalty is a matter of construction, to be decided by the judge alone: *Willson* v. *Love* [1896] 1 Q.B. 626, see the judgment of Lord ESHER, M.R., at p. 629. The principles to be followed were laid down as recently as 1915 by Lord DUNEDIN in *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage and Motor Co. Ltd.* [1915] A.C. 79.

The first test is the language used by the parties to the contract. *Primâ facie*, they must be taken to mean what they say, but their language is by no means conclusive. This test was suggested in many cases earlier in date than *Dunlop's Case*. Lord ESHER, M.R., in *Willson* v. *Love*, at p. 630, observed: "A succession of judges have held that the use of the term 'penalty' or 'liquidated damages' is not conclusive; but no case, I think, decides that the term used by the parties themselves is to be altogether disregarded, and I should say that, where the parties themselves call the sum made payable a 'penalty,' the onus lies on those who seek to show that it is payable as liquidated damages." KENNEDY, J., in *Diestal* v. *Stevenson* [1906] 2 K.B., at p. 350, expressed this principle as follows: "*Primâ facie* the parties must be taken to mean what they say, and if they use the term 'penalty' that is *primâ facie* to be treated as that which is meant. Still, that is a presumption only, and the court must look at all the circumstances in order to ascertain the real nature of the transaction." These *dicta* make the position quite clear.

Secondly, Lord DUNEDIN succinctly stated the distinction between a "penalty" and "liquidated damages" in this way: "The essence of a penalty is a payment of money stipulated as *in terrorem* of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage."

Thirdly, Lord DUNEDIN said that the question is to be decided upon the terms and inherent circumstances of each particular contract, judged of as at the time when the contract was made, not as at the time of the breach. This is, obviously, a most important point, for damages certain at the time of breach may be wholly uncertain at the time the bargain was struck. In *Public Works Commissioners* v. *Hills* [1906] A.C. 368, Lord DUNEDIN, at p. 376, made this observation: "The circumstances must be taken as a whole, and must be viewed as at the time the bargain was made." Lord ESHER, M.R., expressed the same view in *Willson* v. *Love* at p. 629.

These, then, are the cardinal principles. But Lord DUNEDIN, in *Dunlop's Case*, considered four further tests which, he said, if applicable to a case under consideration, might prove helpful or even conclusive.

A.—"It will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach." The matter was expressed in the earlier case of *Clydebank Co.* v. *Castaneda* [1905] A.C. 6, by Lord DAVEY, at p. 16, as follows: "When you find that the sum payable is proportioned to the amount, if I may so call it, or the rate of non-performance of the agreement . . . then you infer that *primâ facie* the parties intended the amount to be liquidated damages and not penalty. I say '*primâ facie*' because it is always open to the parties to show that the amount named in the clause is so exorbitant and extravagant that it could not possibly have been regarded as damages for any possible breach which was in the contemplation of the parties."

B.—"It will be held to be a penalty if the breach consists only in not paying a sum of money, and the sum stipulated is a sum greater than the sum which ought to have been paid (*Kemble* v. *Farren* (1829), 6 Bing. 141)." In *Astley* v. *Weldon*, 2 Bos. & P. 346, a larger sum was stipulated for as a penalty or damages for non-payment of a smaller, and it was held to be a penalty. This case should be contrasted with *The Protector Loan* v. *Grice* (1880), 5 Q.B.D. 592, where money lent was repayable by instalments, the whole debt to become due if default was made in the payment of any such instalment. This was held to be a provision not in the nature of a penalty. BRETT, L.J., at p. 596, said: "A stipulation to pay upon default a sum not larger than the total amount is not a penalty." The reason assigned by COCKBURN, C.J., at p. 595, was that "it is not merely a mode of securing payment of the instalments."

C.—"There is a presumption (but no more) that it is a penalty when 'a single lump sum is made payable by way of compensation, on the occurrence of one or more or all of several events, some of which may occasion serious and others but trifling damage' (Lord WATSON in *Elphinstone* v. *Monkland Iron & Coal Co.*, 11 App. Cas. 332)." Earlier decisions have indicated that in such circumstances the sum was conclusively a penalty." This *dictum* of Lord WATSON, adopted, as it was, by Lord DUNEDIN in *Dunlop's Case*, indicates that it is merely a presumption. In *Magee* v. *Lavell*, 43 L.J., C.P. 131, Lord COLERIDGE, C.J., expressed the general principle to be that "where the contract contains a variety of stipulations of different degrees of importance, and one large sum is stated at the end to be paid on breach of performance of any one of them that must be considered a penalty." BIGHAM, J., in *Pye* v. *British Automobile Syndicate Ltd.* [1906] 1 K.B. 425, took exception to the word "must" in this quotation. He said: "I am sure that Lord COLERIDGE, C.J., did not mean to say that, if other circumstances existed which would throw light on the intention of the parties in making the agreement, a judge might not come to a contrary conclusion. He meant

only that this fact was an important matter to take into consideration when seeking to find out the intention of the parties."

Lord DUNEDIN in *Dunlop's Case*, at p. 89, made this further observation: "I think *Elphinstone's Case*, or rather the *dicta* in it, do go this length, that if there are various breaches to which one indiscriminate sum to be paid in breach is applied, then the strength of the chain must be taken at its weakest link. If you can clearly see that the loss on one particular breach could never amount to the stipulated sum, then you may come to the conclusion that the sum is a penalty." *Willson* v. *Love* illustrates the point. In that case a lease of a farm contained a covenant by the lessees not to sell hay or straw off the premises during the last twelve months of the term, but to consume the same upon the premises, and provided that an additional rent of £3 per ton should be paid by way of penalty for every ton of hay or straw so sold. It appeared that there was a substantial difference between the manurial value of hay and that of straw. The sum was held to be a penalty. The case of *Willson* v. *Love* should be compared with *Dunlop's Case*, where it was held that if a single sum is agreed to be paid as liquidated damages on the breach of a number of stipulations of varying importance, and the damage is the *same in kind* for every possible breach, and is incapable of being precisely ascertained, the stipulated sum, provided it be a fair pre-estimate of the probable damage and not unconscionable, will be regarded as liquidated damages. Further, the words of SCRUTTON, L.J., in *English Hop-Growers* v. *Dering* [1928] 2 K.B. 174, are interesting: "That damages of the same kind, but difficult to value exactly, may be averaged to avoid difficulty seems to me also reasonable."

D.—"It is no obstacle to the sum stipulated being a genuine pre-estimate of damage that the consequences of the breach are such as to make precise pre-estimation almost an impossibility. On the contrary, that is just the situation when it is probable that pre-estimated damage was the true bargain between the parties." This needs no comment, but the observation on this point of SCRUTTON, L.J., in *English Hop-Growers* v. *Dering*, at p. 181, is worth quotation. He said: "If, in a case where breach of a contract may occasion serious damage, but damage which it is difficult to value exactly, people contracting on equal terms agree beforehand to value or ascertain beforehand a conventional figure which shall represent on an average the probable damage from breaches of the same kind, I see no reason to interfere with their 'genuine covenanted pre-estimate of damage' as Lord DUNEDIN describes it. That damages are difficult to estimate is all the more reason why the parties should make their agreement effective and easy to enforce by previously agreeing a measure of damages."

Widnes Foundry (1925) *Ltd.* v. *Cellulose Acetate Silk Co. Ltd.* raised the question whether extravagant inadequacy of a stipulated sum as opposed to exorbitance indicates that it is a penalty. The facts were shortly as follows: The plaintiffs entered into an agreement to manufacture and erect certain plant for the defendants. The plant was to be erected in eighteen working weeks from the receipt of final approval of the drawings. Clause 10 of the agreement provided: "If this period of eighteen working weeks is exceeded we (the plaintiffs) to pay by way of penalty the sum of £20 per working week for every week we exceed eighteen weeks . . ." The work took thirty weeks beyond the time fixed in the contract, and the damage suffered by the defendants was far in excess of the sum stipulated for in cl. 10.

WRIGHT, J., held that the sum of £20 was a penalty, and that the defendants could recover the actual damage sustained. He said: "The relevant criterion is whether the stipulated sum can or cannot be deemed to be, in the words of Lord DUNEDIN in *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage and Motor Co. Ltd.*, at p. 86, 'a genuine covenanted pre-estimate of damage,' and the court may hold in a proper case that it fails to satisfy this test and hence is a penalty, by reason of its extravagant inadequacy as well as by reason of its exorbitance." He held, further, that the damage to be reasonably anticipated in the event of delay was not indirect and uncertain in its nature.

The Court of Appeal (SCRUTTON, GREER and SLESSER, L.JJ.) reversed this decision, and held that the parties had made a genuine attempt to pre-estimate damage, which was uncertain in its nature.

SCRUTTON, L.J., in the course of his judgment said: "The point turns on whether the particular figure can be said to be an estimate by the parties of the damages to be paid for the breach, and I find great difficulty in saying that an estimate lower than the actual loss can ever be a penalty *in terrorem*." SLESSER, L.J., expressed his view in these words: "Most of the learned commentators—particularly Sir FREDERICK POLLOCK, the learned author of "Principles of Contract"—take the view that it (the doctrine that penalties are irrecoverable) is an application of the general equitable doctrine that a man shall not be called on to pay more in damages than the damages which flow naturally from the breach . . . and, in my view, it is to misconceive the whole law with regard to penalty to say that a penalty is to be regarded as unenforceable in a case where the amount to be paid is less than the amount which would have been payable if such a provision had not existed."

Dunlop's Case, and the other cases referred to herein, indicate that a stipulated sum must be either "liquidated damages" or a "penalty." There is no suggestion of another class or category. If, therefore, SCRUTTON and SLESSER, L.JJ., are accurate in their exposition of the law, it follows that a stipulated sum less than the actual loss must always be "liquidated damages," even though it be fixed arbitrarily and without any pretensions to pre-estimation. But "liquidated damages" has been defined by Lord DUNEDIN as "a genuine covenanted pre-estimate of damage."

WRIGHT, J., applied the test—is the sum a genuine covenanted pre-estimate of damage? He came to the conclusion that it was not, and, therefore, that it was a penalty and irrecoverable.

SCRUTTON and SLESSER, L.JJ., appear to have approached the matter from the other angle, applying the test—is it a penalty *in terrorem*? They concluded that it was not, and, therefore, was recoverable. The question arises, is the test—"the essence of a penalty is a payment *in terrorem* of the offending party"—wide enough? It would seem that in *Dunlop's Case* the Law Lords were only contemplating those cases where there is placed on a breach of contract a penalty which is greater than the sum which would naturally flow according to the rules governing remoteness of damage. Had their attention been drawn to the point raised in the *Widnes Foundry Case*, the definition of "penalty" might possibly have been more generally expressed. The words of Lord DUNEDIN in *Public Works Commissioners* v. *Hills*, at p. 375, supply a wider test. They are applicable, as WRIGHT, J., pointed out in the *Widnes Foundry Case*, to inadequacy as well as exorbitance. Lord DUNEDIN said: "The general principle to be deduced . . . seems to be this, that the criterion of whether a sum—be it called penalty or damages—is truly liquidated damages, and as such not to be interfered with by the court, or is truly a penalty which covers the damage, if proved, but does not assess it, is to be found in whether the sum stipulated for can or cannot be regarded as a 'genuine pre-estimate of the creditor's probable or possible interest in the due performance of the obligation.' The *indicia* of the question will vary according to circumstances. Enormous disparity of the sum to any conceivable loss will point one way, while the fact of the payment being in terms proportional to the loss will point the other. But the circumstances must be taken as a

whole, and must be viewed as at the time the bargain was made."

If a stipulated sum lower than the actual loss is never to be treated as a penalty, the position, surely, resolves into this. Exorbitance is always to be treated as "penalty," and inadequacy as "liquidated damages." The offending party is not called on to pay the exorbitant sum; the offended party must be satisfied with the inadequate sum. The iniquity of this state of affairs is obvious.

Moreover, SLESSER, L.J., at p. 484, said: "It is quite impossible, in my view, where the parties have agreed that the damages payable should be very much less than the amount which would be payable if there were no such agreement, in other words, where the agreement is, on the face of it, limiting the damage, and not imposing a penalty on the offending party, that such a limitation can be said to be *in terrorem* of the offending party." The obvious criticism of this passage is that to describe the sum payable as "not imposing a penalty on the offending party," begs the question to which the learned lord justice was seeking an answer. As indicated earlier, SCRUTTON and SLESSER, L.JJ., appear to have applied the test—is it a penalty *in terrorem*?—and, having decided that it was not, concluded that it must be recoverable, presumably, as liquidated damages, for there is no third category. With very great respect, it is submitted that the matter should be approached from the point of view that anything which is not a "genuine pre-estimate of the creditor's probable or possible interest in the due performance of the obligation" is irrecoverable.

Again, SLESSER, L.J., said: "It is an obvious absurdity to say in a case where the offending party has limited his damages, that that limitation which can only benefit him can be either extravagant or unconscionable." SLESSER, L.J., had previously referred to "limitation" of damages, and by that term he clearly meant "a fixed sum less than the actual damage" as opposed to a "fixed sum—greater or less than or equal to the actual damage." The criticisms offered of the above extract are: (1) the damages are limited, if they can be said to be limited at all, by both parties—by a contract between them; (2) the limitation may be extravagant or unconscionable from the offended party's point of view by reason of inadequacy, and one might be excused for thinking that sound "equity" should relieve, not only the offending party, but also the offended party; (3) the question is not "is the sum extravagant or unconscionable?" That is an example, not an exclusive definition, of a penalty, as is pointed out in the judgment of Lord DUNEDIN in *Dunlop's Case*.

It is suggested with deference that, when the learned Lord Justice spoke of "limiting" damages, he had overlooked the principle that these cases must be viewed as at the time of the bargain and not the breach. A stipulated sum cannot very well be both a "limitation" and "a genuine pre-estimate." If a contract "limits" damages, that is to say, if it provides that the amount to be paid be less than the amount which would be payable if such an agreement had not existed, how can such "limitation" be said to be a "genuine covenanted pre-estimate of damage?" If the parties know that the damages are certain and fix a sum lower than the sum certain, that is not a genuine pre-estimate. If the parties know that the damages are indirect and uncertain, e.g., may vary from £50 to £500, and fix a sum, e.g., £80, as the sum payable, that sum, looking at the matter at the time of the bargain, is not a "limitation." The damages may, in fact, for all the parties know at the time of the bargain, be equal to or greater or less than £80. Who can say until after breach?

With respect, it is submitted that the decision of WRIGHT, J., in the *Widnes Foundry Case*, is accurate in principle, and that extravagant inadequacy may, in a proper case, fail to satisfy what is suggested as the real test: "is the stipulated sum a genuine covenanted pre-estimate." The decision of the Court of Appeal upon the particular facts of the case is not, of course, questioned here. But it is suggested that, if it is to be read as laying down the principle that a stipulated sum less than the actual loss is always recoverable as liquidated damages, it is inconsistent with the decisions of the House of Lords in both *Dunlop's Case* and *Public Works Commissioners* v. *Hills*.

(NOTE.—Since this article was written the House of Lords has affirmed the decision of the Court of Appeal in the *Widnes Foundry Case* (see 1932, W.N. 177), but their lordships expressly left open the question whether the extravagant inadequacy of a stipulated sum may constitute it a penalty and render it irrecoverable.)

The Landlord and Tenant Act, 1927

A REAL CONUNDRUM.

[CONTRIBUTED.]

THE question as to whether Counter-claims are permissible under the Landlord and Tenant Act, 1927, provides us with a problem by no means easy of solution. There is, of course, a great deal to be said from the practical point of view—that of convenience—for an affirmative answer; but it does not at all follow that an affirmative answer is correct. The matter, indeed, deserves serious consideration.

It is not, of course, in the least to the point to say that counter-claims have been allowed in divers actions already brought under the Act. So, too, did many tenants secure awards of compensation for goodwill in actions brought prematurely, until *Smith* v. *Metropolitan Properties Co. Ltd.* [1932] 1 K.B. 314, at last stopped them. Those tenants were wrong without knowing it; and yet they succeeded, because in the main it occurred to no one else that they were wrong. But they were wrong all the same.

Nor, it would seem, is it to the point to say that Order 50B of the County Court Rules allows a counter-claim by its r. 9 and a defence thereto by r. 10. For these may be wrong too. Others of the rules under that order have been held to be in part *ultra vires*. Rule 2 (1) had to be amended, because of *Gough's Garages* v. *Pugsley* (1930), 46 T.L.R. 283. Rule 14 (3) had to be amended because of *Donegal Tweed Co. Ltd.* v. *Stephenson* (1930), 73 SOL. J. 367. Why not also rr. 9 and 10? For, after all, the rules—to be good—must be *intra vires* the Act, which alone enables them to be made. Let us, therefore, see where we stand.

For the purposes of Pt. I (i.e., ss. 1–17) of the Act, the normal tribunal is, by s. 21 (1), the county court "acting under and in accordance with this section," i.e., s. 21—though, by virtue of the proviso to such s. 21 (1), the High Court may in certain defined circumstances be the tribunal. It is by s. 21 (5) that "County Court Rules may be made." What for? And the answer is crucial. They may—as there it is enacted—be made "*for regulating proceedings under this section*," (21), "*and for enabling any party to apply to the county court for directions as to the conduct of any reference under this section*," (21).

What this means is clearly seen from s. 21 (2), which enacts that "Where proceedings are commenced in the county court *in respect of any claim or application under Part I of this Act, the matter* shall—unless the parties otherwise agree, or it is otherwise prescribed—stand referred for inquiry and report to . . . one of the panel of referees . . . as if with the consent of the parties *the matter* had been so referred to him in pursuance of Section 6 of the County Courts Act, 1919."

What is "the matter" in question? Obviously "the proceedings in respect of" a "claim or" an "application under Part I of this Act."

By no stretch of the imagination can a counter-claim be a proceeding in respect either of such a claim or of such an application.

"Proceedings," we know, are divided by the rules into two categories, r. 5 (1) stating what proceedings under the Act

"shall be by action commenced by plaint and ordinary summons," and r. 16 stating what "shall be commenced by summons."

Rule 15 as to "Actions not referred" gives us no help. It says that "subject to the provisions of this Order the action shall proceed according to the rules and practice prevailing in the County Court." But "the action" here is only another and a shorter name for such of "the proceedings," above referred to, as by r. 5 (1) have to be commenced by action. It still remains—and remains only—the "proceedings for the determination of a right to compensation or relief in lieu of compensation under ss. 1, 4, 5 and 8 of the Act or any of such sections" (see r. 5 (1)). Nor do the "Rules as to other proceedings" (i.e., rr. 16 to 28)—whereof r. 22 deals with "Procedure," and r. 24 to "Matters not referred"—give any help either. They, again, are only rules. Properly read, they give of themselves no countenance to a counter-claim, and it is obvious that they were never meant to, seeing that rr. 9 and 10 had already dealt with that. And in any case no rules can be valid which exceed the authority conferred by s. 21 (5). Rules cannot confer upon the tribunal a jurisdiction not given to the tribunal by the Act.

Where, then, is the supposed authority for r. 9 *in its present form—or for r.* 10? Section 11, which may be suggested as authority for the rule, gives no countenance to a counter-claim, and there would appear to be considerable justification for the remarks of a well-known authority on the Act, in a report upon its working, published last year, that "As it at present stands, the rule,"—i.e., r. 9 (1)—"on its very face, goes far beyond s. 11, for the very purposes of which it would seem to have been expressly framed."

Let us look at s. 11, with its heading "Right to make *deductions*." It is a section which in any case only applies where compensation under Pt. I of the Act is payable to the tenant. And, in such cases, it enacts by sub-s. (1) that "the landlord shall be entitled to *deduct*" thereout "any sum due to him from the tenant under or in respect of the tenancy"; and by sub-s. (2) that "out of any money due to the landlord from the tenant under or in respect of the tenancy, the tenant shall be entitled to *deduct* any sum payable to him by the landlord" as such compensation as aforesaid.

How can this possibly be more than the allowance of, at most, a *set-off*? Moreover, where a new lease is claimed and no compensation is payable, there cannot even be a deduction—for in such case there is nothing "out of" which to make a deduction. So that even a set-off becomes in such a case impossible.

Exactly what is meant by "any money due to the landlord . . . under or in respect of the tenancy" does not seem very clear. Are these words intended to include, or capable of including, unliquidated damages, e.g., damages—when ascertained—for breach of covenant to repair? Possibly, but only, it is submitted, if independently ascertained and admittedly due before payment of the compensation. For, such a matter is not comprised in the words "proceedings . . . in respect of any claim or application under Pt. I" of the Act, which is "*the matter*" and the only matter with which s. 21 (2) deals, and is "*the matter*" which, in the event of a reference, is referred to the referee.

It is true that in *Kruze* v. *Benskins Brewery Co. Ltd.*, before His Honour Judge CRAWFORD in 1930 (74 SOL. J. 379), and in *Head* v. *Garland*, before His Honour Judge PARSONS (reported in the *Western Daily Press* of the 21st November, 1931)—in each of which the plaintiff was a licensed victualler claiming a new lease—a counter-claim was filed and was successful. But in neither case was any point taken as to the jurisdiction. Thus they help not at all.

But, will say some critic, the very passage already above cited from s. 21 (2): "as if . . . the matter had been . . . referred . . . in pursuance of s. 6 of the County Courts Act, 1919," has been forgotten. Has it? How can that section afford any argument contrary to the conclusion here contended for? The only value of bringing in that section of that Act is to bring in the County Court Ord. XX A "as to the conduct of the reference"; and hence County Court Ord. 50B, r. 30, saying that: "The provisions of Order XX A shall apply to all references so far as not inconsistent with the provisions of this Order." Not one word there as to counter-claim.

Finally—if counter-claims are allowable in proceedings under the Act, why is there not to be found in the High Court Rules, made under the Act, any rule similar to Ord. 50B, rr. 9 (1) and 10? A very sound point this—made by the author of the "Landlord and Tenant Note-Book" in THE SOLICITORS' JOURNAL of the 15th March, 1930.

The true question seems to be this: Is the tribunal (be it the County Court or be it the High Court) "*when acting under and in accordance with this section*" (s. 21 above) sitting solely as a tribunal *ad hoc*? It is submitted that it is. Nor, indeed, is there anything anomalous in that. A county court judge is a tribunal *ad hoc*, when sitting as an arbitrator for the purposes of the Workmen's Compensation Act. And in like manner, as it seems, when sitting as the tribunal under the Landlord and Tenant Act, 1927, he can—as such—have only such powers as are given to him by the Act, supplemented by rules *intra vires* the Act.

Section 11 cannot mean more than it says: *deduction* only, and, further, deduction only of what is due under or in respect of the tenancy (whatever the exact meaning of the latter words may be). It is submitted that no counter-claim is permissible or ought to be allowed to be filed, and it is therefore suggested that rr. 9 (1) and 10 cannot stand, and that, in order to bring them *intra vires* the Statute:—

Rule 9 (1) *should be amended*:—By the deletion of all the words presently following the words "and also," and:—By the substitution therefor of the following words, namely, "*in all cases to which section* 11 *of the Act applies, a statement (with particulars) of any set-off which he may have under such section*"; and:—

Rule 10 *should be deleted.*

Let us hope that some tenant, claiming under the Act, and met with a counter-claim—as contradistinguished from a set-off—will object to the jurisdiction of the court to entertain such counter-claim, so that we may be privileged to secure a decision of the High Court of Justice upon what is admittedly an extremely difficult question.

Road and Rail Rivalry.

A MIXED reception has been accorded in the daily press and elsewhere to the report of the Conference on Road and Rail Transport, published on 17th August. The unanimity of its recommendations and the fact that it has taken over a year to consider its decisions demonstrate the care and sense of responsibility with which it has approached the important questions involved. The conference, over which Sir ARTHUR SALTER was independent chairman, was constituted of the general managers of the four railway groups and of the four representatives of Goods Transport by Road. The main object of the conference was to consider what would be a fair basis of competition between the railways and the roads as methods of goods transport. New scales of licence duties for the different classes of commercial goods vehicles are recommended by the conference. In the case of vehicles not exceeding 3 tons unladen weight the duties are much the same as they were, but there are serious increases in the case of heavier vehicles, especially those which pay no petrol duty and only contribute to the road costs through licence duties. The report contains a warning against extravagant expectations being based on the possible result of increased taxation of commercial road vehicles in driving back traffic to the railways.

After consideration of the accounts of the previous five years, £60,000,000 seemed to be the proper figure to represent annual expenditure on the roads, in order to form a scheme of taxation. Petrol consumption was a useful element in determining the incidence of taxation, as was also the basis of ton-mileage, i.e., a criterion which determines the appropriate contribution to be made by each class by ascertaining on a system of averages the laden tonnage of the vehicles in the class, multiplying this by the estimated mileage they cover in a year and distributing the total of £60,000,000 according to these results. The conference decided that a system of allocation founded equally on ton-mileage and on petrol consumption would be the most satisfying general formula. In modification of this formula, greater allowance, it was said, should be made for the speed and unlimited franchise of the road at one end of the scale than for the extra wear and tear caused by the heavier vehicles at the other end of the scale. The final conclusion was that the £60,000,000 should be allocated as to £23,500,000 to commercial goods vehicles, and as to £36,500,000 to all other mechanically-propelled vehicles. This means that mechanically-propelled goods vehicles are to contribute a further £2,500,000 to the cost of the roads. The conference recommends that no new review of the situation need be taken for five years. It is also suggested that it is inequitable and anomalous for the railway companies to be legally obliged, as they are at present, to maintain at their expense the road surfaces of bridges carrying highways over railways, and it is recommended that the road authorities should undertake these responsibilities for the future. The regulation and licensing of commercial road transport on lines analogous to the system of regulation of rates, wages, conditions of service, etc., to which the railways are subject is further strongly recommended, in order that the conditions upon which competition ought to take place should be more on an equality. Another useful suggestion contained in the report is that for the purpose of securing that goods motor vehicles as well as passenger vehicles using the public road are maintained in a state of fitness, all owners of goods motor vehicles used on public highways shall hold an operating licence, conditional on the payment of reasonable wages and observance of proper conditions of service, and upon an undertaking by the owner that the vehicles employed under the licence are and will be maintained in a proper condition of fitness. The licensing authority should grant licences after having considered any excess in the existing transport facilities to be served by the applicant, and any actual or prospective congestion or overloading of the roads, and there should be a right of appeal from the decisions of the local licensing authorities. It is also suggested that a Central Advisory Committee be formed to act as a Court of Appeal, and to give assistance to the Minister of Transport. It is to be hoped that the report will be speedily followed by legislation which will co-ordinate two essential public services, and help to end the suicidal rivalry which has hitherto been carried on.

Company Law and Practice.

CXLV.

DEBENTURE-HOLDERS AND THEIR RIGHT TO COPIES.

Not so very long ago a friend of mine called my attention to a somewhat curious state of affairs in connexion with trust deeds for securing debentures. Under s. 73 (3) of the Companies Act, 1929, every debenture-holder of a company is entitled to have forwarded to him by the company, at his request, a copy of any trust deed for securing his issue of debentures. "Debenture" is defined in s. 380 as including debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not—and in passing one may observe that the decision in *Lemon* v. *Austin Friars Investment Trust, Ltd.* [1926] Ch. 1, which is not now material to be considered, gave rise to a consideration of the meaning of the word "debenture," and is no doubt responsible for the extended definition given in the Act of 1929.

But the company is not compelled to forward the required document without payment (and here one may perhaps be permitted to remark that this is the law, not only in Scotland, but also in England); if the trust deed is printed, the payment to be made is one shilling, or such less sum as may be prescribed by the company, or where the trust deed has not been printed, the payment is sixpence for every hundred words required to be copied. It is this last provision which gives rise to the curious state of affairs I mentioned at the beginning of this article. A trust deed, as we all know, is a somewhat lengthy document, and the tendency of recent years has certainly not been to shorten it; personally, I hold the somewhat heretical view that the common form ought to be most drastically curtailed, but this view obtains little acceptance in influential quarters, and we continue to be burdened with trust deeds suffering from elephantiasis in its worst form. However, the concrete example which I want to put before my readers is that of a gentleman who wanted a copy of a trust deed securing a series of debentures, of which he held one for £50; he demanded a copy and had to pay over £5 for the privilege. Now it is true to say, though the section does not expressly say so, that a debenture-holder might have a right to inspect a copy of the trust deed, but this right might not suit his purpose, particularly where he desired to seek legal advice in connexion with the deed, for which extracts would not be sufficient.

But it seems absurd that it should have been necessary, in the case I have given, to expend more than one year's income from the investment, in obtaining a copy of the trust deed, and it is doubly absurd in a case where, as happened in the example I have given, the registered holder was a trustee of the debenture. This difficulty could be got over by requiring every trust deed to be printed—this is the case with articles of association (see s. 9 (1)), and I have never yet heard any suggestion that it is an intolerable hardship that it should be so; in the vast majority of cases trust deeds certainly are printed, and it would not be unfair to make it compulsory, for the future, that all of them should be printed. At the time when the trust deed is entered into a company usually has some resources wherewith to meet a printer's bill, and it would be of some real assistance to insist upon prints being made.

At the same time that this alteration was made, the section should be extended so as to confer an express power on a debenture-holder to inspect a copy of his trust deed—there is the power of inspection of the register of debenture-holders conferred by s. 73 (1), which extends not only to registered debenture-holders, but also to members of the company, and the power to inspect copies of trust deeds could be modelled on this other power without any difficulty. In connexion with the power of inspection of the register of debenture-holders there is this anomaly, that there is no statutory obligation on a company to keep any such register; and it is only where a register is in fact kept that the right to inspect it arises. Here again there is a distinction from the case, which might be thought to be analogous, of shareholders—a company is under a statutory obligation to keep a register of its members, with the various particulars set out in the section (see s. 95); and also, in certain cases, an index of the names of the members (s. 96). One may say that there are reasons which make it very desirable that a register of members should be kept, which do not apply with equal force to a register of debenture-holders; but practical experience shows a register is in both cases useful, and it is not easy to see how it can be dispensed with without the risk of having complete chaos;

my readers may be aware of cases where there has been no obligation to keep a register of debenture-holders, but I have yet to come across such a case; and a small addition to the statute book making the keeping of such a register compulsory would regularise the position.

I have mentioned above the right to inspect the register of debenture-holders, but I should say that it is qualified by saying that it does not exist when the register is duly closed, and that it is subject to such reasonable restrictions as the company may in general meeting impose; but the section prohibits the company from imposing such restrictions as to allow less than two hours a day for inspection. As to the due closing of the register, this cannot be for more than thirty days in any year. It might be thought that the right to inspect the register carried with it the right to take copies of such register, but this is not so—*Re Balaghat Gold Mining Co.* [1901] 2 K.B. 665—the section provides, in its second sub-section, that the persons entitled to inspect the register can require copies of it at the rate of sixpence a hundred words, and, as this is their statutory right with regard to copies, they cannot be deemed to have any further implied right of taking copies.

Before the coming into operation of the Companies Act, 1929, any debenture-holder or member who could not obtain inspection of the register, or copies of it or of the trust deed, found himself in an unsatisfactory position. There was a penalty imposed for non-compliance with the requirements of the section, but that was not particularly helpful; however, s. 73 (5) now confers upon the court an express power of compelling an immediate inspection of the register and directing that the copies required shall be sent to the person requiring them. An application under that sub-section is made by summons (O. 53B r. 8 (E)) to which the company will be a respondent, though it need not enter an appearance. There is a similar power in connexion with the register of members, and the index, though there is no apparent power in a member of the company to require a copy of the index or any part of it (s. 98).

It is interesting further to compare the provisions of ss. 98 and 73, for they furnish another illustration of sections which ought to be similarly worded, for the sake of uniformity and clarity, but they are not.

Thus, it may be cheaper to get a copy of a register of debenture-holders than it is to get a copy of a register of members; in the former case the charge is sixpence for every hundred words required to be copied, in the latter it is sixpence for every hundred words or fractional part thereof required to be copied—though here the company may prescribe a less sum, which they cannot apparently do where they have to furnish a copy of the register of debenture-holders. In the section dealing with the register of members, the company has to cause the copy to be sent within ten days commencing on the day next after the day on which the requirement is received by the company; but in the case of a copy of the register of debenture-holders being required, there is no time limit; the result being that in the latter case, a fine is leviable if a copy is not forwarded, while in the former case it is leviable if a copy is not sent within the proper period. A small difference, and one, you may say, of no real significance, but it is nevertheless obvious that uniformity in drafting would be of advantage in every way.

(*To be continued.*)

ANCIENT PROCEDURE INVOKED.

A writ of *elegit*, founded on the Statute of Westminster II (13 Edw. 1, c. 18), was invoked at a Yorkshire Sheriff's Court at Leeds recently. The Act of 1285 allows a judgment creditor to recover the amount due to him out of the receipts derived from property held by the debtor, in the event of the debtor not having any goods upon which a distress warrant can be executed.

A Conveyancer's Diary.

Annuities free of Income Tax and Sur-tax.

The recent case of *Re Reckitt; Reckitt* v. *Reckitt* [1932] W.N. 161, raises again the question with regard to annuities given free of income tax and sur-tax or as it was formerly called, super-tax.

By his will, dated in 1924, a testator, after appointing executors and trustees and giving certain specific and pecuniary bequests bequeathed to his trustees the sum of £200,000 upon trust to invest the same in any of the investments thereinafter authorised, and to hold the investments upon trust thereout to pay to his wife during her life the annual sum of £5,000 "free of income tax," and subject thereto gave the said sum of £200,000 upon the trusts therein mentioned.

A summons was taken out by the trustees to have it determined whether the annual sum of £5,000 payable to the testator's widow was payable free of sur-tax.

Eve, J., held that the annuity was payable free of sur-tax.

On appeal, the Court of Appeal upheld that decision.

There have been various decisions on this point which seem to require consideration and are not easily reconcilable with each other, and it would appear that *Re Reckitt* has at last set at rest doubts on the subject.

In *Re Crawshay* [1915] W.N. 412, the question was before the court with regard to what was then called super-tax.

The facts in that case were that by a deed poll, dated in 1880, a donee of a power of appointment appointed that out of the income of a trust fund, over which he had a power of appointment, the sum of £1,500 "free of all deductions, except income tax," yearly and every year from the day of his death, should be paid to his wife during the remainder of her life.

By a codicil to his will made in 1900, the donee of the power bequeathed to his wife during her widowhood such a sum as, together with the income for the time being received by her under the said appointment, would make up an annual sum of £2,000 "clear of all deductions including income tax," to be paid quarterly.

By a second codicil, dated in 1901, the testator declared that the annual sum of £2,000 directed by his first codicil to be paid to his wife should be increased to the annual sum of £2,500 "clear of all deductions including income tax" to be paid quarterly.

Peterson, J., in his judgment, said that the gift of an annuity "free from all deductions" would not free the annuitant from liability to pay income tax, and that unless income tax were expressly included in the term "deductions" the annuitant would have to pay it. Trustees who had to pay an annuity were accountable for the income tax, and, in the ordinary course, would deduct the income tax before payment. His lordship was of opinion that what the testator was considering when he gave the annual sums in question was the income tax for which the trustees would be accountable. Now, super-tax was not a charge in respect of any particular annuity or sum but was a charge in respect of the recipient's whole income, and was not a matter with which the trustees would be charged or concerned at all, and so the annuity was not given free of super-tax which the annuitant must pay herself.

That case was followed in *Re Bates Selmes* v. *Bates* [1925] Ch. 157.

In *Re Bates* the facts were that a testator gave to his wife "such a sum in every year as, after deduction of the income tax for the time being payable in respect thereof, will leave a clear yearly sum of £2,000," such annuity to commence from his death and to be payable quarterly out of the income of his residuary estate.

Russell, J., held that the wife was entitled to the £2,000 free of income tax only, and was not entitled to payment of any sum in respect of super-tax.

In the course of his judgment, Russell, J., dwelt upon the wording of the will, and pointed out that the testator had not said that the annuitant was to be paid her annuity free of income tax. What he had said was that she was to be paid such a sum in every year as, after deduction of the income tax for the time being payable in respect thereof, would leave a clear sum of £2,000. His lordship distinguished *Re Doxat* (to which I will refer presently) on the ground that, upon the wording of the will before him, no super-tax was really payable "in respect of" the annual sum there in question, and therefore, the expression "after deduction of the income tax for the time being payable in respect thereof," could not apply to super-tax.

I have referred in some detail to these two cases because they seem to be at variance with the other authorities, and especially with *Re Reckitt*, the decision in which gave rise to this article.

I do not say that *Re Crawshay* and *Re Bates* were wrongly decided, but I do suggest that those cases will only be followed when the question is one of construction arising upon language similar to that employed in the instruments then before the court.

Now to refer to the other authorities which certainly do not appear to support the decisions in *Re Crawshay* and *Re Bates*.

First, in *Brooke* v. *Inland Revenue Commissioners* [1918] 1 K.B. 257, the nature and incidence of super-tax was considered, the question there being whether a person resident abroad was liable for super-tax on income derived from abroad, and Swinfen-Eady, L.J., said: "Super-tax . . . is merely an additional income tax . . . I fail to see why there should be any difference between super-tax and the rest of income tax or what distinction can be drawn between them."

Then there is *Re Crosse ; Oldham* v. *Crosse* [1920] 1 Ch. 240.

In that case a testator, by his will, made in 1915, directed his trustees out of the income of his residuary estate to pay to his wife during widowhood the sum requisite to make up her marriage settlement income to "the clear annual sum of £4,000 a year free from income tax."

It was held by Astbury, J., that the wife was entitled to the £4,000 a year free from super-tax as well as ordinary income tax.

With regard to that decision it must be said that the learned judge was, as it seems, much impressed by the *dictum* of Parker, J., in *Bowles* v. *A.-G.* [1912] 1 Ch. 123, where that learned judge said: "The super-tax is in fact an income tax. It is referred to in the Act which imposes it as an additional duty of income tax."

It is, however, obvious that the construction of any particular will or other instrument must prevail.

Another case in point is *Re Doxat* [1920] W.N. 262.

In that case a testator made the following provision: "I give to my said wife an annuity of £2,500 during her life free of income tax and of all other deductions, the same annuity to be paid by equal quarterly payments," etc. Then followed provisions for setting aside a sum to answer the annuity and for investment of the fund.

Sargant, J., held, in effect, that upon the construction of the will before him "income tax" included "super-tax."

It appears, therefore, that *Re Crawshay* and *Re Bates* cannot now be regarded as authorities for the proposition that an annuity given "free of income tax" is not free of sur-tax. The logic in the close argument of the learned judge in his judgment in the former case is apparently unanswerable, but, as it seems to me, it was based upon an entirely false hypothesis. I cannot believe that "what the testator was considering when he gave the sums in question was the income tax for which the respective trustees would be accountable in respect of the particular annuity or sum." The testator was not considering anything of the kind. All he had in mind was that the annuitant should receive in full the amount of an annuity, and he used language which was, at the time, appropriate to accomplish that end.

We have probably heard the last of *Re Crawshay* and *Re Bates*. At least I venture to hope so.

With regard to the method of adjustment between the annuitant whose annuity is bequeathed free of income tax and the testator's residuary estate, reference should be made to *Re Pettit ; Le Fevre* v. *Pettit* [1922] 1 Ch. 765, where Romer, J., laid down a rule which, I respectfully suggest, accords with common sense and follows *Re Bowring* [1918] W.N. 265.

Landlord and Tenant Notebook.

Notice of Distress.

It is rare that a doubt is so completely, and so satisfactorily, dispelled as that which surrounded the meaning of "a notice of distress" before the decision in *Davies* v. *Property and Reversionary Investments Corporation* [1929] 2 K.B. 222.

By a notice of distress I mean the document referred to in the Distress for Rent Act, 1689, s. 2: ". . . where any goods or chattels shall be distrained for any rent . . . and the tenant or owner of the goods shall not within five days next after such distress taken, and *notice* thereof (with the cause of such taking) left at the chief mansion house, or other most notorious place on the premises . . . replevy the same . . . then in such case . . ." and the section goes on to confer the right of sale upon the distrainor; and in order properly to appreciate the difficulty, it is well to remember that no such right had hitherto been enjoyed by landlords, distress being merely a right of seizure, from which, according to the preamble to the statute, they had little benefit. Incidentally, it was some time before Parliament realised that the 1689 Act had exposed innocent third parties to much unmerited loss; though their goods and chattels had never been exempt as such, landlords had generally refrained from seizing them for the simple reason that such a course was not calculated to induce the defaulting tenant to pay up.

The requirement as to notice, then, qualifies the right of sale, giving the distrainee a right of action for illegal or for irregular distress in the event of non-compliance. But the enactment is silent on the subject of what, beyond the "cause of the taking," the notice must state.

It might at first sight seem plausible that notice of the levy would suffice, but this is negatived by the provision for service, which clearly contemplates the possibility of a valid distress and sale of which the tenant might, if absent, be completely ignorant. Further, the word "distress" is, of course, capable of two meanings; in some contexts it indicates the remedy and procedure, in others the goods and chattels seized; and the use of the word "taken"—not "levied"—in the section certainly points to the conclusion that the notice relates to articles seized and intended to be sold.

But whether it was sufficient to mention that articles had been seized, or was necessary to specify and describe the articles seized, was a debatable point; and the atmosphere of doubt was intensified by the apparent conflict between two authorities, *Wakeman* v. *Lindsey* (1850), 14 Q.B. 625, and *Kerby* v. *Harding* (1851), 6 Exch. 234. In the one, the notice, after describing one or two articles, went on: "and any other goods and effects that may be found in and about the said premises, to pay the said rent and expenses of this distress," and was held to be good. In the other, the notice again enumerated certain articles and then proceeded: "and all other goods, chattels and effects on the said premises that may be required in order to satisfy the above rent, together with all the expenses" and was held to be bad. And so the matter remained until, in 1927, the defendants in *Davies* v. *Property and Reversionary Investments Corporation*, *supra*, caused a distress to be levied on premises let to the plaintiff, and their certificated bailiff sold goods, some specified in and others intended to be covered by, a notice which concluded with the words "and

all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress and expenses." The action having been referred to an official referee, who gave judgment for the plaintiff, the defendants appealed to the Divisional Court, where the older authorities were carefully analysed by Talbot and Humphreys, JJ.

The first comment made by the court was to the effect that it was with some hesitation and reluctance that the judges who tried *Wakeman* v. *Lindsey* approved the notice. It is then pointed out that Parke, B., who was one of the judges in question, heard *Kerby* v. *Harding* at *nisi prius*, applied it to the facts before him, but afterwards delivered the judgment of the Court of Exchequer making absolute a rule granted. Such circumstances as these certainly suggest that the conflict was apparent rather than real.

And upon further examination it is clear that in both these cases the court insisted that the object of the provision was that the party distrained upon should have notice *of what was taken*, and that it must include *every thing taken*; and it was in fact because the notice in the older case did not limit itself to "goods that may be required to satisfy" or to "goods sufficient to satisfy" that it escaped condemnation; for the court really based its judgment on a construction of the notice by which it covered all the goods upon the premises: "the word 'all' does give a description."

Kerby v. *Harding* was accordingly applied; and the effect of *Davies* v. *Property and Reversionary Investments Corporation* can be said to be this: when a landlord or bailiff finds that the goods on the premises are of less value than the amount of rent distrained for, he may sell after leaving a notice stating "everything"; in other cases it must specify "every thing."

Our County Court Letter.

ESTATE AGENTS' COMMISSION.

In *Crisps Estate Agency* v. *Dashwood* at the last Bristol Assizes, the claim was for £174 5s. as commission on the sale of the defendant's grocery business. The plaintiffs' case was that (*a*) they introduced the defendant to a prospective purchaser in June, 1928, but the negotiations ceased owing to the defendant's decision not to sell, (*b*) in June, 1930, the defendant sold the business for £2,500 to the person originally introduced by the plaintiffs, (*c*) a letter withdrawing their instructions had not been received by them. A submission was made that there was no case to answer, as (1) the matter was moribund from September, 1928, to March, 1930, (2) introduction alone gave no right to commission, which was only due if the plaintiffs were the effective cause of the sale. The submission having been over-ruled, it was contended that the plaintiffs' authority had been revoked in 1929. The defendant and his wife gave evidence that a letter revoking their authority had been sent to the plaintiffs, whose acknowledgment was burned, as the matter was considered closed. Mr. Justice Avory held that (*a*) the plaintiffs had not found a willing purchaser in 1928, and were only entitled to commission if the relationship of principal and agent subsisted in March or June, 1930, (*b*) their authority had been withdrawn in 1929, and their introduction (although it might have caused the purchaser to remember the business) was not the effective cause of its sale. As the plaintiffs were no longer agents for the defendant, the latter was entitled to judgment, with costs. Previous cases were noted under the above title in the "County Court Letter" in our issue of the 4th June, 1932 (76 Sol. J. 392).

THE DEFINITION OF "ISSUE."

The rule in *Sibley* v. *Perry* (1802), 7 Vesey 522, was held to apply in the recent case of *Midland Bank Executor and Trustee Company Limited* v. *Moore*, at Birmingham County Court. The plaintiffs were the trustees under the will of Joseph Selvey, deceased, who (by his will, proved in 1897) had (1) bequeathed life interest in moieties of his estate to a son and a daughter, and (2) after the death of the survivor had directed his trustees to divide the proceeds of sale "equally among all my grandchildren share and share alike and the issue of such as may have died before that time, such issue nevertheless to take his her or their parents share only." The evidence was that the last life tenant had died on the 16th October, 1931 (which therefore became the period of distribution), and that there were about forty possible claimants to the residue. Directions were therefore asked as to whether (1) the estate of a grandchild who predeceased the period of distribution (without leaving children) was entitled to participate, (2) children of a predeceased grandchild must themselves survive the above period in order to qualify, (3) children of a predeceased grandchild should take *inter se* as joint tenants or as tenants in common. His honour Judge Dyer, K.C., held that the testator had made an original gift to such of the grandchildren as survived the period of distribution and to the children of any grandchild who predeceased such period leaving issue. The first two questions (*supra*) were therefore answered in the negative, on the authority of *In re Timson* [1916] 2 Ch. 362. As regards the third, it was held on the authority of *In re Yates* [1891] 3 Ch. 57, that the children of a predeceased grandchild were entitled as joint tenants. The case was therefore referred to the registrar to settle advertisements and to report who was entitled to benefit, with liberty to apply, and costs to stand over as the proceedings were friendly.

Books Received.

Probate and Estate Duty Practice. By Edgar A. Phillips, LL.B., of the Principal Probate Registry. Third Edition. 1932. Demy 8vo. pp. xix and (with Index) 402. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Limited. 12s. 6d. net.

Petroleum Distribution Accounts. By Joseph Johnson, Associate of the Chartered Institute of Secretaries. 1932. Demy 8vo. pp. xv and (with Index) 126. London: Gee & Co. (Publishers) Limited. 8s. net.

Tax Cases. Vol. XVI. Part VI. Reported under the direction of the Board of Inland Revenue. 1932. Royal 8vo. pp. 381–450. London: His Majesty's Stationery Office. 1s. net. Postage extra.

The Bombay Law Journal. Vol. X. No. 3. August, 1932. Bombay: The Union Press. Annual subscription, Rs.10 for India; Rs. 13 foreign. Single copy, Rs. 2.

Stock Exchange Investments for Non-Residents. July, 1932. London: Fred. C. Mathieson & Sons. 6d. net.

Children and Young Persons Acts, 1908–1932. Edited by Geoffrey G. Raphael, of the Inner Temple and South-Eastern Circuit, Enid Rosser, of Lincoln's Inn and South Eastern Circuit, and Wilfrid Fordham, of the Inner Temple and South-Eastern Circuit, barristers-at-law. 1932. Demy 8vo. pp. xxvi and (with Index) 335. London: Eyre & Spottiswoode (Publishers) Limited. 21s. net.

Report of the Dormant Funds Committee. 1932. London: His Majesty's Stationery Office. 4d. net, postage extra.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

APPEAL COURT BY THE SEA.

On Wednesday last, for the first time for many years, a Lord Justice of Appeal heard an interlocutory appeal during the Long Vacation. Lord Justice Romer consented to sit at his country house at Littlestone-on-Sea, Kent, to hear an appeal arising from a decision of Mr. Justice Goddard, sitting as vacation judge the previous week.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Income Tax—Change of Occupation—Liability of New Occupier.

Q. 2551. The point is continually being raised on completions respecting the Income Tax Act, 1918, First Schedule, Sched. A, No. VII 3 (*a*) and (*b*). On purchasing property from a vendor who, prior to completion, has been in possession of the premises agreed to be sold, our contention is that whether or not such vendor is liable, no apportionment of tax is required, inasmuch as the above-mentioned section of the Income Tax Act does not relieve the vendor of his liability up to the date of completion, and specifically protects the purchaser against payment of any tax payable up to the same date, and we should be pleased if you would confirm that this is the correct contention. On the purchase of vacant property, where in order to give vacant possession, the vendor's tenant gives up occupation, it has been submitted that the purchaser would not have the protection of the above-mentioned section, inasmuch as the word "occupier," mentioned in that particular section of the Act, does not extend to include a vendor's tenant, but only the vendor himself, and your opinion on this point is also desired.

A. We do not think there is any difficulty in the construction of the rule. If the previous owner was in occupation the purchaser is not liable, but if a tenant was in occupation, the purchaser is liable to discharge the arrears, either directly or through *his* tenant. As a point of practice, it is usual to require evidence of discharge or some undertaking, as the purchaser is not necessarily supposed to know that the vendor has been in possession during the whole of the relevant period. It is agreed that if he *does* know this he need not trouble about the tax.

Workman's Death from Heart Disease.

Q. 2552. I should be obliged if you could inform me whether there is any direct case on the point as to whether a man suffering from a minor form of heart disease, employed by a removal contractor, whilst lifting a piano, dies suddenly from heart failure. Is this an accident within the meaning of the Workmen's Compensation Act, in respect of which the dependents can recover? Please let me know your views, as my searches have failed to produce such a case.

A. There appears to be evidence to support a finding of an accident arising out of and in the course of the deceased's employment, in accordance with the decisions of the Court of Appeal in *McFarlane* v. *Hulton Bros.* (*Stevedores*), *Ltd.* (1927), 136 L.T. 547; also *Flanagan* v. *Ackers, Whitley & Co.* (1927), 19 B.W.C.C. 399. These have been followed in *James* v. *Partridge Jones and John Paton, Ltd.*, in which a new trial was granted by the Court of Appeal on the 10th February, 1932, and an appeal against the subsequent award was dismissed by the Court of Appeal on the 20th June, 1932.

Mortgages of Freeholds—Legal Estates of Successive Mortgagees.

Q. 2553. A was the owner of property. In November, 1926, the property was mortgaged to B. In December, 1926, and again in 1929, the property was further mortgaged to C and D respectively. All three mortgages were by demise, and were for terms of 3,000 years only, instead of for 3,000 years, 3,000 years and a day, and 3,000 years and two days. The second and third mortgages were not expressly declared to take effect in reversion expectant on the termination of the previous mortgage or mortgages. D, the third mortgagee, now wishes to sell the property under his statutory powers. Supposing that the first and second mortgages are not paid off prior to the completion of the purchase, I shall be glad if you will kindly advise on the following points:—

(1) Have the second or third mortgagees any legal estate in the property?

(2) Has the third mortgagee any powers of sale?

(3) On any other points which occur to you.

A. (1) We are disposed to consider that the demise to the second mortgagee operated as an assignment of the reversion on the first mortgage term for the period of that term, that is to say, that the reversion was leased for the period of the first mortgage term. As to the third mortgage we do not think that the demise passed any estate seeing that the reversion on the first mortgage term was already (in effect) entirely assigned. On this basis the second mortgagee had a legal estate but the third mortgagee had not.

(2) We do not think so.

(3) The proper remedy of D would appear to be foreclosure, and he could in the course of the action ask for a sale (*Oldham* v. *Stringer* (1884), 51 L.T. 895).

Judgment Summonses for Arrears of Alimony.

Q. 2554. About ten years ago a client obtained an order of the High Court for the payment of the sum of £2 per week by her husband as permanent alimony. Until quite recently the husband made payment under the order, but recently (a matter of a few months only) he began to fall into arrear. Our client sought to issue a judgment summons in the county court in respect of the arrears. The registrar of the county court at first refused to issue the summons, on the ground that under Ord. 42, rr. 22 and 23, of the R.S.C., after a lapse of six years execution could only issue with the leave of the High Court, and that such rules applied to proceedings in divorce, citing the case of *Goodwin* v. *Goodwin* (1897), p. 87. He pointed out that for some purposes execution included committal and stated that he was of opinion that procedure by way of judgment summons might possibly be considered execution within the meaning of the rules referred to. Officials at the Divorce Registry disclaimed all knowledge of any need of leave in such a case, and ultimately the county court registrar issued the summons, but stated he should feel bound to call the attention of the judge to the point on the hearing. As the judgment summons will shortly come on for hearing, we shall be glad of an expression of opinion as to whether procedure by way of judgment summons is "execution" within the meaning of the rule in question so as to necessitate leave of the High Court being obtained before procedure in the county court under the Debtors Act can be pursued. We should like to know the arguments pro and con, and authorities on the point would be welcome.

A. The proposition that for some purposes execution includes committal appears to be out of date since the abolition of imprisonment for debt. When the latter procedure was available, execution could be levied upon the body of the debtor, but nowadays the latter can only be imprisoned for contempt of court. This procedure does not follow as a natural sequence from the original judgment, and is only available when a fresh cause of action has arisen, based on

refusal to pay after proof of means. Rules 22 and 23 (of Ord. 42) are silent as to the circumstances in which they are to apply, but they appear to be designed to prevent a sudden execution upon moribund judgments. *Goodwin* v. *Goodwin* (cited in the question) is an example of such a state of affairs, as the decree *nisi* was made in 1886, but the costs were not taxed until 1897—after the co-respondent had come into a fortune. The present case is entirely different, as the order obtained ten years ago has been continuously acted upon ever since, and is the very reverse of moribund. The payments within the last few months are analogous to acknowledgments excluding the operation of a statute of limitations, and the issue of a judgment summons will involve no element of surprise or hardship upon the defendant. The case is therefore outside the mischief of Ord. 42, rr. 22 and 23, and no leave of the High Court is necessary, although there appear to be no authorities on the point.

Positive Covenant—Breach—Remedies—Whether Covenant Runs with the Land.

Q. 2555. Clients of mine, a brewery company, owned several plots of land near one of their public-houses, and some years ago sold one of the plots to X. The conveyance contained (*inter alia*) a covenant by the purchaser to erect a house on the plot of land within eighteen months of the date of the conveyance. This covenant was inserted in this and other conveyances with a view to houses being erected in the neighbourhood, and the occupants, or some of them, becoming customers at the vendors' public-house. X did not, in fact, build any house, and the land has been used only as a garden. When X was written to she stated that she could not afford to build a house. The vendors still own several of the plots.

(1) Can the vendors claim specific performance of the covenant, and if so, in what manner?

(2) What other remedy or remedies have the vendors got against X?

(3) What is the measure of damages? (It would be difficult to prove the hypothetical loss of custom which the public-house has sustained).

(4) If X sells the plot, does the covenant run with the land, or is the vendors' only remedy against X personally?

A. (1) We do not think so (*Errington* v. *Aynesley*, 2 Bro. Ch., p. 343) unless the covenant contained a detailed description of the house to be erected (*Rushbrooke* v. *O'Sullivan*, (1908), 1 Ir. R. 232), which we take it was not the case.

(2) We doubt whether there is any other remedy than an action for damages for the breach of the covenant.

(3) It is difficult to suggest how the damages would be assessed, they would appear to consist of the possible loss of custom, and would be relatively trivial.

(4) The covenant is personal to the covenantor and subsequent purchasers are not bound even with notice (*Austerberry* v. *Corporation of Oldham* (1885), 29 Ch. D. 750).

Apportionment of Rent of Controlled House.

Q. 2556. In 1919 W rented rooms from the freeholders of a controlled house at 8s. 6d. a week, subsequently increased under the Act to 10s. 6d. W left the premises in 1920, and H, the tenant of the other rooms in the house, became tenant of the whole of the premises and (it is believed) sub-let the rooms which had been previously let to W; but at what rent is not known. In 1922 W returned and rented two rooms from H at 10s. a week. In 1929 H's son moved out and H let another room to W for 5s., making his rent for the three rooms 15s. a week. The rent paid by H to the freeholder is said to be 23s. a week. Can W claim a reduction of rent, and, if so, what is the correct procedure?

A. The question whether W can claim a reduction of rent depends upon what proportion of the whole house is occupied by him, and whether the rent paid by him for his portion is excessive, as compared with the rent paid to the freeholder by H. The latter does not appear to be profiteering, or exploiting W at the expense of the freeholder, as it appears that W has actually been charged less rent since 1922 (for two of the rooms) than he paid on leaving the premises in 1920. It is true that W is now paying for three rooms as much as many tenants pay for a whole house, but this again may be justified by the size and position of the rooms, as compared with many modern houses. It does not appear that the freeholder ever obtained actual possession of any of the rooms, so as to make them de-controlled, or that any of the rooms were sub-let furnished, so as to entitle the freeholder to possession under *Barrell* v. *Fordree* (1932) W.N. 140. W's case for reduction does not appear to have much chance of success, but the matter can be tested (if desired) by delivering to the county court Form 17, being a Request for Arbitration under s. 11 (2) of the 1923 Act, pursuant to the Rent (Restrictions) Rules, 1923.

Former Owner as Statutory Tenant.

Q. 2557. Down to October, 1921, A held a lease of a house in Chelsea subject to a mortgage to a building society. Being in arrear with his repayments he sold the lease subject to the mortgage to our client B. B allowed A to remain in occupation at the yearly rent of £22. About two years ago by mutual consent this rent was increased to £30. Down to 5th April, 1931, the income tax assessment was £30. For the year ending last April the assessment has been raised to £40 and A has deducted £10 tax—£7 10s. the Lady-day rent and £2 10s. part of the Midsummer rent. In pointing out to A that he was only entitled to deduct tax on the rent he pays, A has retorted that the increase made two years ago cannot be supported for he was a controlled tenant and no notice under the Rent Restriction Act has been served upon him. Must an owner who became a tenant before the 31st July, 1923, be treated as a statutory tenant?

A. A is apparently indifferent to the fact that, if his contention prevails, he will be entitled to deduct a still smaller amount of tax from his rent. A became a tenant, however, before the 31st July, 1923, and therefore he became a statutory tenant, as the fact that he was previously the owner of the same house is no ground for distinguishing his position from that of any other tenant. Prior to the above date, all houses (within certain rental limits) were controlled, even if the tenancies were only created for the first time shortly before the passing of the decontrolling Act of 1923. The question is, therefore, answered in the affirmative.

Maintenance Agreement after Divorce.

Q. 2558. A has a maintenance order made against him by the magistrates in respect of the maintenance of his wife and child at the rate of 30s. per week, subsequently reduced to 10s. per week. The wife obtains a divorce against A, no application for maintenance or alimony being made in the divorce proceedings. Can an agreement be made between the parties, under which the wife receives a lump sum in discharge of the maintenance order, and would an agreement under which she abandoned her claim against A be valid and effectual, especially in case she or the child should ever become chargeable to the public assistance authorities?

A. The proposed agreement in this case is after a decree in divorce proceedings, and different considerations therefore arise from those in *Matthews* v. *Matthews* [1932] W.N. 152, where an agreement not to "make any claim or demand for maintenance or institute any legal proceedings" was held to be no bar to an order by the magistrates. In *Jenkins* v. *Jenkins* (1930), 46 T.L.R. 309, the wife (after decree) had agreed to accept a lump sum in "full and final settlement of any future claim for maintenance." Mr. Justice Bateson, having made an order "on the petitioner's undertaking not to file any petition for maintenance . . . hereafter" remarked that that would prevent the petitioner from coming to the court to try to get more. On the other hand, in *Olding* v.

Olding (1930), 46 T.L.R. 539, the President (Lord Merrivale) made an order for a lump sum payment by consent, and the woman petitioner was debarred from any future application for maintenance, unless with the leave of the court. The latter proviso implies that the matter is not finally closed, even after a court order. In the present case it cannot therefore be said that an agreement (under which the wife abandons her claim against A) will be valid and effectual, if merely made between the parties. An application for an order by consent should be made to the divorce court, and the amount of protection afforded to the husband will depend upon which of the two last-named cases is followed.

Nuisance from Baker's Chimney.

Q. 2559. A (a builder) purchased two building sites forming part of a building estate and built two houses on the sites in question. B has a baker's shop adjoining the building estate, upon which there is a bakehouse with a chimney (approximately) 10 to 12 feet in height. Coke is consumed in the bakehouse, so that when the prevailing wind is blowing, noxious fumes pass into the bedrooms of A's two houses. The two houses have never been occupied, as A wishes to sell, but prospective purchasers refuse to entertain a purchase as the nuisance is so manifest as to make the houses uninhabitable. The workmen who erected the two houses referred to can speak of the noisome fumes and other similar evidence could be obtained. The premises have not been occupied and some doubt is felt as to the right of the building estate owner or of A to an injunction or other remedy. Opinions with authorities would be much appreciated.

A. The existence of the nuisance appears to be capable of proof (from the evidence of the workmen) and the consequent damage to A's property can be proved from the evidence of prospective purchasers. It is no defence for B to point out that A came to the nuisance (which was obviously already in existence), and that A has therefore no cause for complaint. This doctrine of "coming to the nuisance" has not been a valid defence since the decision in *Elliotson* v. *Feetham* (1835), 2 Bing. N.C. 134. On the other hand B may have acquired by prescription (as an easement) the right to pollute the air over A's land, as in *Bliss* v. *Hall* (1838), 4 Bing. N.C. 183—a case of a candle factory. It is apprehended that the nuisance from B's chimney is not so great as to constitute a public nuisance, as to which no right can be acquired by prescription. A can, therefore, claim an injunction (unless B has acquired a prescriptive right by long user), but the building estate owner has no cause of action, unless he has merely granted a lease to A. In that event the building estate owner can become a co-plaintiff in respect of the damage to his reversion.

Solicitor Trustee Receiving Commission ON CONVERSION OF WAR LOAN.

Q. 2560. Can a solicitor who is a trustee authorised to charge for professional services in connexion with the trust receive and retain as remuneration the brokerage to be paid by the Government to solicitors on conversion of the 5 per cent. War Loan to 3½ per cent., or is the proper course to credit the trust with the commission thus received and charge by items for such necessary attendances, correspondence, etc., as the conversion of War Loan belonging to the trust may involve?

A. We know of no ground on which the solicitor trustee can claim to retain the commission without the consent of the beneficiaries all being of full age. It appears to us to be clearly a profit made by him in his capacity as solicitor and as such should be accounted for, whilst the solicitor is entitled to charge by items for work done, if his power to charge is sufficiently wide to authorise such charges. On the other hand, a solicitor trustee is not bound to put his stamp on the conversion request, and, as far as we are aware, commits no breach of trust if he allows some other solicitor, even his own partner, to receive the money provided he himself receives no benefit.

Obituary.

MR. A. A. TAYLER.

Mr. Athelstane Artaud Tayler, solicitor, a partner in the firm of Messrs. Finch, Turner and Tayler, solicitors, of Cannon-street, E.C., and Upper Norwood, died suddenly from heart failure during the extreme heat of Thursday, the 18th August. Mr. Tayler, who was admitted a solicitor in 1892, was sixty-three years of age, and had been a partner in his firm since 1913. In his younger days he was a keen cyclist, and was a member of the Old Times Cycling Club.

MR. E. W. MILES.

Mr. E. W. Miles, solicitor, of Cowbridge and Llantwit Major, died on Saturday, the 27th August. He was admitted a solicitor in 1878, and had been in practice at Cowbridge for over fifty years. He was one of the oldest members of the Vale of Glamorgan Agricultural Society.

MR. T. MUIR.

Mr. Thomas Muir, solicitor, of Brechin, died on Saturday, the 20th August. Mr. Muir, who was born at Ayr, was for a number of years in partnership with the late Mr. Alexander Philip, solicitor. He later went into partnership with Mr. T. Maule Guthrie, continuing up to the time of his death

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

As his end approached, Charles II came to lean more and more on Lord Guilford and no court intrigues succeeded in shaking his well-founded confidence. "Here, take it, my lord; you will find it heavy," the King had said in delivering the Great Seal to him, and so indeed it proved, for the Lord Keeper afterwards confessed that since then he had not enjoyed one easy or contented moment. His duties he discharged with zeal, though, already before the death of Charles, his health was failing. On that event, he sought to be relieved of his burden, but his wishes were overruled and he sat another term in court, obviously a dying man. During the summer, he obtained permission to retire to his country seat at Wroxton, taking the Great Seal with him and attended by the officers of his court. Here he kept great state, dispensing profuse hospitality, till on the 5th September, 1685, he died at the early age of forty-eight. His brothers Dudley and Roger rode to Windsor forthwith and delivered the Great Seal to James II, who immediately confided it to Lord Guilford's implacable enemy Jeffreys, with the title of Lord Chancellor.

THE RENO SUPERSTITION.

The code of divorce jurisdiction drafted at the conference of the International Law Association is calculated to put a final spoke in the whirling wheels of the short notice "divorce mills." However, the Gretna superstition is taking such an unconscionable time to die that one can hardly expect the Reno superstition to be killed at a blow. If anything could have advertised the futility of this rather primitive belief in the magic of a month's holiday abroad it should have been the famous trial of the late Lord Russell for bigamy. A miserable union with a merciless wife and the desperate expedient of a Nevada divorce, followed next day by a marriage ceremony before a certain Judge Curler, brought him to trial in July, 1901. The tribunal seemed risen from the Middle Ages—eleven judges in full ceremonial splendour, a hundred and sixty peers in coronets, capes and robes, "dignified and stately," beyond even the chorus in "Iolanthe," the Lord High Steward attended by Black Rod, the Serjeant-at-Arms, the Clerk in Chancery, the Clerk in King's Bench, all playing their allotted parts in the almost religious ritual of

legal and constitutional traditionalism. Bewildered as his compatriot John K. Petre in Mr. Belloc's biting satire on English legal procedure, Judge Curler, who was present, was probably not a little gratified to have evoked by his simple ceremony such a costly pageant of historic splendour, even though this mountain of formalism brought forth only the little mouse of a three months' sentence.

A Notable Defence.

Since the recently mourned death of Sir William Clegg, the eminent solicitor, no one remains who was actively engaged in the trial of the notorious Charlie Peace, perhaps the case for which he is best remembered. He defended the murderer in the police court proceedings and the great Lockwood represented him at the Leeds Assizes, when he was sentenced to death, and no blame to his legal advisers. In fact Lockwood used to relate how some time after the execution a large party of ladies in deep mourning called at his chambers. On asking his clerk who they were he was informed that they were Charlie Peace's widow, his aunts, his daughter and several near relatives. Lockwood was dismayed and quite at a loss how to receive them or what to say, but he directed them to be shown in, assuming a suitably grave and sorrowful expression for the occasion. When they were all seated, he began apologetically: "Ladies, I assure you I did my best to——" But the widow interrupted him: "I am afraid, sir, you mistake the object of our visit. Please accept our heartiest thanks for the very satisfactory result of the trial. We are greatly relieved and comforted." How far the tale is apocryphal, those who know Lockwood's style of humour may conjecture.

Long Vacation, 1932.

HIGH COURT OF JUSTICE.

Notice.

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to The Hon. Mr. Justice Lawrence.

Court Business.—The Hon. Mr. Justice Lawrence will, until further notice, sit in The Lord Chancellor's Court, Royal Courts of Justice, at 11 o'clock on Wednesday in each week for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

Papers for Use in Court.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 5s. impressed stamp.

3.—Two copies of writ and two copies of pleadings (if any).

4.—Office copy affidavits in support, and also affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested, when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

Urgent Matters when the Judge is not Present in Court or Chambers.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrar's office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

Chancery Chamber Business.—The Chancery Chambers will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

King's Bench Chamber Business.—The Hon. Mr. Justice Lawrence will sit for the disposal of King's Bench Business in Judge's Chambers on Tuesday in each week at 11 o'clock.

Probate and Divorce.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.15 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 7th and 21st September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on each Wednesday during the Vacation.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

Royal Courts of Justice,
Room 136.

Legal Notes and News.

Honours and Appointments.

Mr. Arthur Courtney Kingstone, of St. Catharines, Ontario, has been appointed a Judge of the Ontario High Court.

Mr. John Skinner, solicitor, and Clerk to the Urban District Council of Brentford and Chiswick, has been appointed Charter Town Clerk to the new Borough of Brentford and Chiswick.

Professor Joseph Jones, M.A., B.D., has been appointed to the Committee on Local Expenditure as an additional member on behalf of Wales. Professor Jones is a member of the Brecon County Council.

Professional Announcement.

(2s. per line.)

The Solicitors' Mortgage Society, Ltd. (formed by Solicitors for Solicitors), invites particulars of Funds or Securities. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. William Burnett Esam, solicitor, of Broom Hall, Sheffield, left estate of the gross value of £37,025, with net personalty £366,606. He left £250 to Hilda Bumpton, if still in his service; £50 and £15 for each year of service after August, 1931, to Matilda Holmes, if still in his service; 100 guineas to the Rev. Harold Ewbank, if still vicar of St. Silas, Sheffield; the following bequests to members of the staff of his firm, if in such service at his death or retirement; £600 each to Mr. Habbijam, Frank A. Pike, and George Henry Wright, and a further £250 to the said Frank A. Pike; £100 to Miss Swann; £150 each to Mr. Clark and Mr. Foster; £250 to the Solicitors' Benevolent Society; 100 guineas each to the Jessop Hospital for Women and the Children's Hospital, Western Bank, Sheffield; his interest in property in Hanover-street, Sheffield, to his sister, or should she be dead, to the trustees of St. Silas Parish Room (Wright Memorial Hall), and failing them to the vicar and churchwardens of St. Silas Church, Hanover-street, Sheffield, and also £100.

Mr. Thomas William Seager Berry, of Stevenage, Herts, Solicitor to the London County Council 1905-07, and afterwards a partner in Messrs. Sherwood & Co., Parliamentary agents, left property of the value of £57,736, with net personalty £52,166. He left £250 to the rector and churchwardens of Stevenage.

Mr. Augustus Alfred Arnold, solicitor, of Cobham, Kent, left estate of the gross value of £70,241, with net personalty £65,264. He left £400 to Elizabeth Frances Parr, housekeeper; £50 to his former clerk, H. S. Ring.

Mr. Harold George Eustace Preston, solicitor, of Amersham, late of Doughty-street, W.C., left £10,559, with net personalty £7,589.

Mr. Frederic William Lucas, solicitor, of Surrey-street, Strand, left £23,939, with net personalty £12,262.

Mr. Henry Parrott May, solicitor, of Staveley-in-Cartmel, Lancs, left £41,112, with net personalty £35,406.

Mr. Henry Kendall Bond, solicitor, of Ipswich, left £88,374, with net personalty £85,119.

Mr. Arthur Round, solicitor, of Birmingham, left £9,367, with net personalty £7,210.

Mr. Charles Bevan Jenkins, of Wells, Somerset, formerly solicitor, of Swansea, left £30,417, with net personalty £26,911.

Mr. Thomas Charles Hindmarsh, barrister-at-law, of Half Moon-street, W., left £15,069, with net personalty £9,501.

Mr. Henry Simon Batley Jackaman, solicitor, of Ipswich, left £22,136, with net personalty £20,097.

CENTRAL CRIMINAL COURT BAR MESS.

Sir Henry Fielding Dickens, K.C., is to be entertained at a complimentary dinner on the occasion of his retirement from the office of Common Serjeant by the past and present members of the Central Criminal Court Bar Mess. The dinner will be held at the Connaught Rooms, Great Queen Street, Kingsway, W.C., on Friday, 21st October, 1932, at 7 o'clock. Sir Percival Clarke, Senior Treasury Counsel at the Central Criminal Court and Recorder of Exeter, will take the chair.

Application for tickets should be made to the Secretary of the Central Criminal Court Bar Mess, Mr. Albert Crew, 3, Plowden Buildings, Temple, E.C.4.

BUILDING SOCIETY MORTGAGES.

The boards of management of the Abbey Road, Co-operative, National and Woolwich Equitable Building Societies made the following announcement last Wednesday night:—

"The normal rate of mortgage interest charged by London societies has heretofore been 6 per cent. The rate of interest to be charged on new mortgages until further notice is reduced by half per cent., thus lowering the calendar monthly instalment to 14s. per £100 borrowed on the twenty years' repayment scale.

"This reduced scale of repayment will be made applicable to new mortgage applications which may be in hand at the moment and as yet uncompleted.

"At this stage no undertaking can be given to reduce the rate of interest chargeable on existing mortgage contracts. Whether any rebate is practicable can only be determined at a later date."

A similar announcement was also made by the Halifax Building Society, reducing the rate of interest on new mortgages for suitable private houses in the London district to 5½ per cent.

COMPANIES WITH LOW CAPITAL.

The report of the Comptroller of the Companies Department, which was issued last Wednesday, shows that 8,797 new companies were registered last year, compared with 8,866 in 1930, and 8,386 in 1922. Their total capital was £65,058,209, compared with £112,259,379 in 1930, £240,422,640 in 1929, and £131,729,895 in 1922.

RIGHT OF APPOINTMENT OF SOUTHWARK CORONER.

The right to appoint the coroner for the Borough of Southwark has passed from the City Corporation to the London County Council under the provisions of the Coroners (Amendment) Act, 1926. This right was granted to the City in 1550 by Charter of King Edward VI, and since that year the Court of Common Council has appointed the coroner for the City and Southwark. Under the 1926 Act the transference became operative on the appointment of a new coroner, and the recent resignation of Dr. F. J. Waldo has thus terminated the City's ancient privilege. The corporation appoints the coroner for the City.

Mr. Rhys Hopkin Morris, the newly appointed Metropolitan Police Court magistrate, took his seat at the Lambeth Police Court on Wednesday for the first time.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 8th September, 1932.

	Middle Price 31 Aug. 1932.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	106	3 15 6	3 12 5
Consols 2½%	72	3 9 5	—
War Loan 5% 1929-47 Assented	99¼xb	3 11 1	—
**War Loan 4½% 1925-45	102	—	—
Funding 4% Loan 1960-90	108	3 14 1	3 10 11
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	105xd	3 16 2	3 14 6
Conversion 5% Loan 1944-64	114½	4 7 4	3 10 0
Conversion 4½% Loan 1940-44	108½	4 2 11	3 5 5
Conversion 3½% Loan 1961 or after	98xd	3 11 5	—
Local Loans 3% Stock 1912 or after	83½	3 11 10	—
Bank Stock	310	3 17 5	—
India 4½% 1950-55	101	4 9 1	4 8 4
India 3½% 1931 or after	78	4 9 9	—
India 3% 1948 or after	67	4 9 7	—
Sudan 4½% 1939-73	105	4 5 9	3 12 4
Sudan 4% 1974 Redeemable in part after 1950	105	3 16 2	3 12 4
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
Canada 3% 1938	97½	3 1 6	3 9 5
*Cape of Good Hope 4% 1916-36	101	3 19 2	—
Cape of Good Hope 3½% 1929-49	97	3 12 2	3 14 10
Ceylon 5% 1960-70	108	4 12 7	4 9 8
*Commonwealth of Australia 5% 1945-75	102	4 18 0	4 15 9
Gold Coast 4½% 1956	106	4 4 11	4 1 10
*Jamaica 4½% 1941-71	104	4 6 6	3 18 9
*Natal 4% 1937	101	3 19 2	3 15 1
New South Wales 4½% 1935-45	93½	4 16 3	5 4 0
*New South Wales 5% 1945-65	100	5 0 0	5 0 0
*New Zealand 4½% 1945	100½	4 9 7	4 8 11
*New Zealand 5% 1946	106½	4 13 11	4 6 9
Nigeria 5% 1950-60	111	4 10 1	4 1 9
*Queensland 5% 1940-60	99½	5 0 6	5 0 8
*South Africa 5% 1945-75	108½	4 12 2	4 2 10
*South Australia 5% 1945-75	99½	5 0 6	5 0 7
*Tasmania 5% 1945-75	101½	4 18 6	4 16 10
*Victoria 5% 1945-75	99½	5 0 6	5 0 7
*West Australia 5% 1945-75	98½	5 1 6	5 1 9
Corporation Stocks.			
Birmingham 3% 1947 or after	82½	3 12 9	—
*Birmingham 5% 1946-56	112	4 9 3	3 17 6
*Cardiff 5% 1945-65	106½xd	4 13 11	4 6 9
Croydon 3% 1940-60	93	3 4 6	3 7 9
*Hastings 5% 1947-67	113	4 8 6	3 16 10
Hull 3½% 1925-55	97½	3 11 10	3 13 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	70	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corporation	83	3 12 3	—
Manchester 3% 1941 or after	82½	3 12 9	—
Metropolitan Water Board 3% "A" 1963-2003	85	3 10 7	3 11 8
Do. do. 3% "B" 1934-2003	85	3 10 7	3 11 8
*Middlesex C.C. 3½% 1927-47	99	3 10 8	3 11 10
Do. do. 4½% 1950-70	110	4 1 10	3 14 6
Nottingham 3% Irredeemable	81½	3 13 7	—
*Stockton 5% 1946-66	109½	4 11 4	4 1 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	97	4 2 6	—
Gt. Western Rly. 5% Rent Charge	109½	4 11 4	—
Gt. Western Rly. 5% Preference	72	6 18 10	—
L. Mid. & Scot. Rly. 4% Debenture	85½	4 13 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	72½	5 10 4	—
Southern Rly. 4% Debenture	92½	4 6 6	—
Southern Rly. 5% Guaranteed	98	5 2 0	—
Southern Rly. 5% Preference	59½	8 8 0	—
‡L. & N.E. Rly. 4% Debenture	79½	5 0 8	—
‡L. & N.E. Rly. 4% 1st Guaranteed	60	6 13 4	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

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